



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

MEMO ENDORSED

December 3, 2019

*The Clerk of the Court is directed to
mail a copy of this Order to the Plaintiff*

Hon. Kenneth M. Karas
United States District Judge
United States District Court
United States Courthouse
300 Quarropas Street, Chambers 533
White Plains, New York 10601-4150

Re: *Johnson v. Doty et al.*
15 cv-7823 (KMK)
Response to Plaintiff's letter dated November 8, 2019 (Dkt. Nos. 148-149)
Response to Plaintiff's motion to compel filed November 21, 2019 (Dkt. No. 150)
Request for extension to file motion for summary judgment

Dear Judge Karas:

I represent the remaining Defendant Officer Matthew Kitt ("Kitt") in this action and write in response to Plaintiff's letter dated November 8, 2019, Plaintiff's motion to compel filed November 21, 2019 and to request an extension to file Kitt's motion for summary judgment.

By way of brief background, Plaintiff, a former detainee at the Westchester County Department of Correction ("WCDCR") seeks compensatory and punitive damages against Kitt as well as unspecified costs of the litigation. The gravamen of Plaintiff's claim is that on or about and leading up to October 5, 2014, his First Amendment rights were violated when the Eid-ul-Ahda, an "Islamic Service", was improperly scheduled while he was a detainee at the WCDCR.

On January 17, 2018, this office sent Plaintiff Initial Disclosures containing approximately 390 pages. Plaintiff sent a "Motion for Discovery and Interrogatories dated June 1, 2019 to this office. On July 12, 2019, plaintiff filed a "Motion for Order Compelling Discovery. *See*, Dkt. No. 134. On July 16, 2019, Your Honor denied Plaintiff's motion to compel discovery as premature as Plaintiff was given until August 2, 2019 to file a Fourth Amended Complaint ("FAC") and Kitt was given until August 16, 2019 to file a response. *See*, Dkt. Nos. 133, 134 and 136. In light of the Plaintiff's representation that he did

not wish to file a FAC, Kitt filed an Answer to the Third Amended Complaint (“TAC”) on August 15, 2019. *See*, Dkt. No. 140.

A conference was held on October 10, 2019 and a discovery schedule was set by the Court. Kitt requested an extension, which was granted. *See*, Dkt. Nos. 145, 147. On November 4, 2019, Kitt filed discovery responses (“Kitt’s Discovery Responses”) and served them by regular and overnight mail on that date. Kitt served discovery requests, including a First Request for Production of Documents as well as First Set of Interrogatories dated October 30, 2019 (“Kitt’s Discovery Requests”) to which Plaintiff’s responses were due on December 2, 2019.

At his telephone deposition on November 12, 2019, Plaintiff agreed that he received Kitt’s Discovery Responses but “it was not helpful at all.” Plaintiff testified at his deposition that he received Kitt’s Discovery Responses but “did not understand” what he was being asked.

During his deposition, Plaintiff testified that he or another inmate on his behalf typed and or wrote various letters regarding the issues raised in his TAC, including a request about the scheduling conflict of the Muslim service for October 5, 2014, requests/letters about “Officer Kitt’s behavior”¹ and a copy of a log book sheet that established that the Islamic Service was called and cancelled at 11:45 on October 5, 2014. Plaintiff testified that the alleged log entry was given to another inmate by an unidentified correction officer, either male or female, after Plaintiff’s grievance was denied.

Plaintiff also testified that he sent the alleged log book entry as well as other documents via mail in a manila envelope to his “child’s mother.” Due to the fact that Plaintiff had not responded to Kitt’s Document Requests, which were not due until December 2, 2019, I advised Plaintiff that I might be asking the Court for an additional hour to depose him once I received his responses.

On November 21, 2019, Plaintiff forwarded Kitt’s discovery responses to the Court asking Kitt to “turn over entire discovery.” *See*, Dkt. No. 150. Plaintiff is correct that redactions were made to the various log books and this was done for security reasons. The log book entries that were not redacted pertain to the issues in this case. The Interrogatories were answered in accordance with the Federal and Local Rules. Kitt request that Plaintiff’s motion to compel and that his request in his letter dated November 8, 2019 be denied. In the alternative, should this Court determine to refer these discovery issues to a United States Magistrate Judge for resolution, Kitt will provide an unredacted copy of the logbooks for the Court’s *in camera* review.

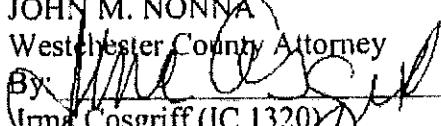
As stated in this letter, there are numerous discovery requests outstanding and this office is in the process of compiling a list of additional documents/information to be requested from Plaintiff as a result of his deposition testimony. Depending on what is provided, this office may request an additional one hour telephone deposition of Plaintiff. Therefore, Kitt respectfully requests an extension to file his motion for summary judgment from December 12, 2019² to January 24, 2020.

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¹ Plaintiff testified that the timing of the service “was bad,” and that Kitt’s behavior was “consistently unruly”, that he was “doing immature stuff” and that his “antics was just, you know abrasive.”

² Even though Your Honor’s Individual Rules require a pre-motion letter prior to filing a motion for summary judgment, it was counsel’s understanding that the date of December 12, 2019 was for the actual filing of the motion and not for a pre-motion letter.

Should Your Honor's staff have any questions, I can be reached at (914) 995-3577. Thank you.

Respectfully submitted,
JOHN M. NONNA
Westchester County Attorney
By: 
Irma Cosgriff (IC 1320)
Senior Assistant County Attorney

IWC/st

Overnight Delivery and Regular Mail
cc: LARRY JOHNSON, JR. #409369
Osborn-CI, 335 Biton Road
PO Box 100
Somers, CT 06071

Granted.

So ordered.


12/11/19